Editor's note: Reconsideration denied by Order dated Jan. 29, 1991.

VIRGIL HORN

MARCELLA HORN

IBLA 89-507 Decided November 21, 1990

Appeal from a decision of the California State Director, Bureau of Land Management, declining to interpret the terms of mineral patent No. 89-04-0004, as requested. CA 3860.

Affirmed.

1. Mining Claims: Patent--Patents of Public Lands: Effect

> Upon issuance of a mineral patent for a mining claim in a wilderness area in a National Forest, fee simple title to the land described in the patent passes to the patentee. The land is private land, no longer subject to the mining laws, and the Bureau of Land Management has no authority to entertain challenges to regulation of surface uses of other land under Forest Service jurisdiction.

APPEARANCES: Virgil Horn, Junction City, California, pro se, and on behalf of Marcella Horn.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Virgil and Marcella Horn have appealed from a decision of the California State Director, Bureau of Land Management (BLM), dated May 15, 1989, declining to interpret the terms of mineral patent No. 89-04-0004, as requested, and holding that BLM had no authority to intervene with management of lands under the jurisdiction of the Forest Service, United States Department of Agriculture.

On October 25, 1988, BLM issued patent No. 04-89-0004 to Virgil and Marcella Horn for a 40-acre mining claim known as the Dan Raymond Placer Mining Claim, described as lot 5, sec. 19, T. 35 N., R. 11 W., Mount Diablo Meridian, and located entirely within the Trinity Alps Wilderness Area in the Trinity National Forest, Trinity County, California. The patent specifically stated that the grant was restricted to the exterior boundaries of the "said mining premises."

By letter dated December 7, 1988, the Forest Service District Ranger, Big Bar Ranger District, informed Virgil Horn that as of the date of patent

he became owner of private land surrounded by National Forest land; that a mining plan of operations which had authorized certain uses was no longer effective since the land was now private land; and that all uses outside the patented land were subject to Forest Service regulations governing special uses (36 CFR Part 251, Subpart B) and wilderness (36 CFR Part 293). The District Ranger provided Horn with two application forms for Special Use Authorization, one for access to the land and the other for water transmission and diversion.

By letter dated March 20, 1989, Horn requested that the California State Director, BLM, inform the Regional Forester that the patent constituted all the permits needed for his continued and historic access to his land and the continued use of a waterline right-of-way.

In response, the State Director issued his May 15, 1989, decision, stating:

> No easement rights attach against the United States Government for land uses outside the boundaries of your patented land. The Forest Service as the land management agency will not deny
> you access to your property, however, your rights are now those
> of a private land owner, and subject to Forest Service policy
> and regulations, the same as any other private land owner. Once patent issues, the mining claim no longer falls within the purview of the General Mining Law of 1872.
>
> The Bureau of Land Management has no authority to intervene with management of land uses under Forest Service jurisdiction.

In their statement of reasons on appeal, appellants assert that the Department of the Interior retains jurisdiction of this matter; the State Director was incorrect in his interpretation; the provisions of the mining laws do not cease to operate upon issuance of a patent; and their access and waterline rights-of-way are expressly granted in the language of 30 U.S.C. §§ 22 and 51 (1988).

[1] A mineral patent issued by the United States "is the instrument of conveyance by which it passes its title to portions of the public domain and is the origin of private ownership of the land." American Law
of Mining, § 30.06[5] (2d ed. 1989). Appellants seek the benefits of the general mining laws; however, they no longer possess a mining claim located on Federal land. Upon issuance of the patent, fee title ownership of the 40 acres described in the patent transferred to appellants. See Moran & Ebner, "The Mineral Patent," 24 Rocky Mt. Min. L. Inst. 269, 274 (1978). The use of additional National Forest lands by appellants outside the exterior boundaries of the patent land is subject to regulation by the Forest Service.

It is well established that the effect of issuance of a patent is to transfer title to the lands from the United States, and at that time the

Department of the Interior loses jurisdiction over such land. Henry J. Hudspeth, Sr., 78 IBLA 235, 237 (1984); see Germania Iron Co. v. United States, 165 U.S. 379 (1897). Thus, upon issuance of the patent in this case, BLM lost any jurisdiction over the land, and the State Director correctly informed appellants that BLM had no authority to entertain challenges to regulation of surface uses of other land under Forest Service jurisdiction.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge